

STATE OF MICHIGAN  
COURT OF APPEALS

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FAMILY ORTHOPEDIC REALTY,

Petitioner-Appellee,

v

FLINT CHARTER TOWNSHIP,

Respondent-Appellant.

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UNPUBLISHED  
November 9, 1999

No. 207009  
Michigan Tax Tribunal  
LC No. 00226430

Before: Holbrook, Jr., P.J., and Zahra and J.W. Fitzgerald,\* JJ.

PER CURIAM.

Respondent appeals as of right from an opinion and judgment of the Michigan Tax Tribunal establishing the taxable value of petitioner's commercial property for the tax years 1995, 1996, and 1997. We affirm.

Appellate review of Tax Tribunal decisions is limited under Const 1963, art 6, § 28. *Meadowlanes v Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991); *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984). "In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

I

The primary issue in this case is the tribunal's calculation of the taxable value of petitioner's property for the 1995 tax year. Respondent argues that the Tax Tribunal erred in concluding that under the statutory scheme, "occupancy could not be reflected as an assessment loss as defined by statute, prior to 'taxes levied before 1995.'" Specifically, respondent's position is that because a loss could be allowed for a decrease in occupancy in the 1993 assessment, the loss could be taken as an addition for an increase in occupancy in the 1995 assessment.

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\* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

However, we need not decide whether the Tax Tribunal erred in its construction of the statutory provisions. The record clearly shows that the tribunal found that the SEV reduction in 1993 did not reflect a loss due to a decrease in occupancy:

The subject property's true cash value as of December 31, 1993 was reduced by Respondent to reflect the physical condition and zero occupancy that existed prior to Petitioner . . . moving its affiliated company . . . into the subject property. . . .

\* \* \*

In addition, the subject property was completely vacant in 1992. The decrease in value reflected in the reduction of assessed value in 1993 could not reflect a "loss" in occupancy over 1992, which was already 100% vacant. Respondent, having visited the building and reviewed the work for future rental, reduced the assessed value for tax year 1993 to \$600,000, reflecting a true cash value of \$1,200,000. . . .

The Tribunal holds the needed improvements affected the subject property value and caused the lack of occupancy. . . . Prior to the new construction curing the obsolescence, the subject property was vacant.

If there was no loss due to a decrease in occupancy in 1993, then respondent would not be entitled to reflect an increase in occupancy as an addition to the taxable value of the property in the assessment for the 1995 tax year.

We conclude that the tribunal's factual finding that the reduction of the 1993 assessment was not a loss due to a decrease in the occupancy rate is supported by competent, material and substantial evidence on the whole record. The record reveals that the building had been vacant in 1991 and 1992 before petitioner purchased the property in December 1992. Because the property was vacant in 1991, the 1992 assessment for the property, based on 50% of the true cash value as of December 31, 1991, was lowered from \$1,250,000 to \$992,300. After petitioner purchased the building, it sought a reduction in the 1993 assessment from \$992,300 to \$500,000 to reflect half of the \$1,000,000 purchase price.

Ultimately, respondent lowered the SEV for the property to \$600,000. Before the tribunal, the parties disputed whether this reduction reflected the lack of occupancy or its purchase price. Mr. Richard Harris, one of petitioner's attorneys before the tribunal, testified that Mark MacDermaid, respondent's assessor, acknowledged to Harris that the 1993 SEV for the property was reduced to \$600,000 on the basis of the property's sale price. Conversely, MacDermaid testified that the reduction was based on a decrease in occupancy. However, given that there was evidence that the subject property had been totally vacant in 1992, it was reasonable for the tribunal to conclude that the reduction was not based upon a loss attributable to a decrease in occupancy. Therefore, because we believe that the tribunal's finding that there was no corresponding loss due to a decrease in the occupancy rate for the 1993 tax year is supported by the evidence, we conclude that the tribunal did

not err in determining that respondent was not entitled to reflect an increase in occupancy as an addition to the taxable value of the property in the assessment for the 1995 tax year.

## II

We also believe that the Tax Tribunal did not err in determining the value of new construction performed during the 1994 calendar year for the purpose of determining the taxable value of the property for the 1995 tax year. MCL 211.34d(1)(b)(iii); MSA 7.52(4)(1) (b)(iii). The Tax Tribunal determined that petitioner performed approximately \$300,000 in new construction in 1994, thus producing an increase of \$150,000 in assessed value. This determination is supported by evidence that plaintiff had expended \$303,560.48 in renovating the building. The Tax Tribunal did not calculate any “addition” for intended improvements made by petitioner’s two tenants because respondent failed to present competent evidence that these improvements were actually carried out. Contrary to respondent’s claim, the true cash value of the new construction was not the difference between the property’s true cash value of \$2,860,000, as of December 31, 1994, and the property’s true cash value of \$1,200,000, as of December 31, 1993. As petitioner points out, respondent did not follow the formula for calculating the true cash value for new construction set forth in the State Tax Commission Bulletin.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra

/s/ John W. Fitzgerald